K Surjit Kaur a/p Gean Kartar Singh v Belinda Ghoi Shuk Yee

HIGH COURT (KOTA KINABALU) — CIVIL APPEAL NO 12–25 OF 2002
IAN CHIN J
26 FEBRUARY 2003

***Tort** — Defamation — Qualified privilege — Petition against appellant circulated and then forwarded to two persons of high ranks — Claim for damages for libel dismissed on the ground what was published enjoyed qualified privilege — Whether there was a common interest in the matter between the person issuing and the person receiving the communication — Whether the sessions court judge was right in his findings*

The appellant, a cabin crew officer with the Malaysian Airline System ('MAS') sued the respondent for damages for libel but her claim was dismissed by the sessions court judge on the ground that what was published enjoyed qualified privilege. The defamation was contained in a letter authored by the respondent on behalf of the MAS cabin crew to the senior vice president and executive vice president of MAS to seek their interference as to remove the appellant from her post. It stated that some of the cabin crew were unhappy with the way they were treated in matters that were under the supervision of the appellant. The appellant, not being satisfied with the decision of the sessions court judge, appealed. The issue to be determined by the court was whether the session court judge was right in deciding that the petition letter published enjoyed qualified privilege and its requirements met.

Held, dismissing the appeal with costs:

(1) One of the essentials to be established for such a plea was that there must be a common interest in the matter between the person issuing and the person receiving the communication. The learned sessions court judge found that there was that common interest (see p 94E, G–H); *Watt v Longsdon* [1930] 1 KB 130 and *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 followed.

(2) In his impeccable judgment, the sessions court judge concluded that there was a corresponding or common interest on the part of the two personages of MAS mentioned in the petition. These two persons held very high positions in MAS and any matter that might affect MAS, of which the unhappiness or grievances of the cabin crew must surely be one, and that must surely commanded their interest as much as it was the interest of the defendant as a member of MASEU to resolve the matter for the cabin crew. The High Court could add no more to the reasoning, except to adopt every word of it and found nothing wrong in that conclusion. The appellant had rested their appeal on this one ground of common interest and the High Court found that the

sessions court judge was right in concluding that there was such (see pp 95H–96B).

[Bahasa Malaysia summary

Perayu, seorang pegawai pekerja kabin dengan Malaysian Airline System ('MAS') telah menyaman responden untuk ganti rugi kerana libel tetapi tuntutan beliau telah ditolak oleh hakim mahkamah sesyen atas alasan apa yang diterbitkan menikmati perlindungan bersyarat. Fitnah tersebut terkandung dalam sepucuk surat yang telah ditulis oleh responden bagi pihak pekerja kabin MAS kepada naib presiden kanan dan naib presiden eksekutif MAS yang memohon mereka campur tangan agar perayu dipecat daripada jawatannya. Ia menyatakan bahawa beberapa pekerja kabin tidak gembira dengan cara mereka dilayan dalam perkara-perkara di bawah penyeliaan perayu. Perayu, yang tidak puas hati dengan keputusan hakim mahkamah sesyen, telah membuat rayuan. Persoalan yang perlu ditentukan oleh mahkamah adalah sama ada hakim mahkamah sesyen betul dalam memutuskan bahawa surat petisyen tersebut menikmati perlindungan bersyarat dan keperluannya telah dipenuhi.

Diputuskan, menolak rayuan dengan kos:

(1) Suatu yang penting yang perlu dibuktikan untuk pli sedemikian adalah perlu ada kepentingan bersama dalam perkara antara orang yang menyampaikan dan orang yang menerima komunikasi tersebut. Hakim mahkamah sesyen yang bijaksana telah mendapati terdapat kepentingan bersama (lihat ms 94E, G–H); *Watt v Longsdon* [1930] 1 KB 130 dan *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 diikut.

(2) Dalam penghakiman beliau yang kemas dan rapi, hakim mahkamah sesyen telah memutuskan bahawa terdapat satu kepentingan yang sama atau bersama di pihak dua orang ternama MAS yang dinyatakan dalam petisyen. Kedua-dua orang yang memegang jawatan tinggi di MAS dan apa-apa perkara yang mungkin memberikan kesan kepada MAS, seperti perasaan tidak gembira atau kegelisahan pekerja kabin pasti merupakan salah satu daripadanya, dan yang harus diambil berat oleh mereka sama seperti keprihatinan defendan sebagai seorang ahli MASEU untuk menyelesaikan perkara tersebut untuk pekerja kabin. Mahkamah Tinggi tidak dapat menambah apa-apa kepada hujah tersebut, selain daripada memakai setiap perkataan dan mendapati tiada apa-apa yang salah dengan keputusan tersebut. Perayu telah menumpukan rayuan mereka atas satu alasan kepentingan bersama ini dan Mahkamah Tinggi mendapati bahawa hakim mahkamah sesyen adalah betul (lihat ms 95H–96B).]

A **Notes**

For cases on qualified privilege, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 377–380.

Cases referred to

B *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 (folld)
Watt v Longsdon [1930] 1 KB 130 (folld)

Sugumar Balakrishnan (*Sugumar & Co*) for the appellant.
Ronny Cham (*Ronny Cham & Co*) for the respondent.

C **Ian Chin J**:

Introduction

K Surjit Kaur ('the appellant') sued Belinda Choi Shuk Yee ('the respondent') for damages for libel and her claim was dismissed after a trial D on the ground that what was published enjoys qualified privilege. The defamation was, as found by the sessions court judge, contained in the following letter:

> 30 March 1998
>
> To: Dr Mohamadon Abdullah
> E Senior Vice President,
> Flight Operation,
> Malaysia Airlines.
>
> Sir,
>
> We, the undersigned, viewed the presence of Ms Surjit Kaur at BKI as an Officer for Cabin Crew with regrets. During her tenure, she has created F mistrust, disharmony and fear amongst the cabin crew.
>
> There were many times when her bad handling dashed the crews' enthusiasms. The crew were shouted at for trivial cases in the presence of others. Bad mouthing from one crew to the other and instigating drew to 'back-stab' one another. Her lackadaisical attitude towards helping the crew that falls within her jurisdiction of duties has created a lot of frustrations.
> G
>
> We have resorted to many avenues by referring the matters to Flight Operations at KUL and MASEU. Our hopes were to see the matters resolved in an amicable manner when the tripartite meetings were held between Human Resources of Flight Operation, MASEU and Ms Surjit Kaur in the past were annihilated.
>
> H It is now evident that the crown is too big for Ms Surjit Kaur and we seek your interference to remove her without further delay.
>
> Thank you.
> Yours truly,
>
> Cabin Crew of BKI
>
> I cc Executive Vice President of MAS.

The appellant was not satisfied with the decision of the sessions court judge, hence this appeal.

Grounds of appeal

Before considering the ground of appeal which at today's hearing, it was confined to one only, certain facts have to be set out in order to appreciate the issues. The appellant was at the relevant time a cabin crew officer responsible for supervising the cabin crew in regards to their leave, duty roster, transfer and complaints. The lower court found that the respondent did author the letter, which is termed a petition, which came about this way. Some cabin crew were unhappy with the way they were treated in the said matters that were under the supervision of the appellant. They met with the president of MASEU, a union for the employees of Malaysian Airline System ('MAS') and a meeting was later held with senior officers of MAS in Kuala Lumpur. The complaint was unresolved and the cabin crew then formed a Cabin Crew Action Committee under the umbrella of MASEU and then after the president of MASEU had given the go ahead, the petition was circulated for signatures and it resulted in 41 signatures with some retracting. The petition was then dispatched to the senior vice president and copied to the higher ranking executive vice president. It was also copied to the president of MASEU. I turn now to consider the issue of qualified privilege, the law for which there is no dispute.

Qualified privilege

One of the essentials to be established for such a plea is that there must be a common interest in the matter between the person issuing and the person receiving the communication (see *Watt v Longsdon* [1930] 1 KB 130 at p 146). This essential is stated in the case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142 in these words (at p 154):

> A common interest for the purpose of the defence of qualified privilege to an action for libel occurs where the words complained of as defamatory were published in pursuance of an interest or of a duty, legal, social, or moral, to publish them to the person to whom they were published and the person to whom they were published had a corresponding interest or duty to receive them. The reciprocity is essential. The bona fide belief of the defendant that there existed such an interest or that he was under such a duty to make the communication is immaterial, for the thing which is relevant to the question whether or not the occasion was privileged is the existence in fact of the duty or interest and not merely the defendant's belief in the existence of the one or the other.

After having reminded himself on the law, the learned sessions court judge then found that there was that common interest and his reasoning is so well set out that I can do no better than reproduce here what he had said in his judgment:

> I shall accordingly consider whether the defamatory letter is a communication on a matter of common interest or mutual concern shared by the plaintiff and the three recipients. I shall also consider the whether the recipients had a reciprocal duty to receive the defamatory letter. Dr Mohamadon Abdullah, Senior Vice President of MAS, is the head of flight operations and all cabin crew matters would ultimately come under his purview. The defendant role is

in authoring and collecting signatures for a petition complaining about the plaintiff in respect of her conduct as Cabin Crew officer. The defendant also said that she is head of the CCAC which was set up to look into grievances of cabin crew. Counsel for plaintiff had suggested during cross-examination that CCAC is an unregistered illegal society. I cannot come to that conclusion as defendant and DW2, an exco of MASEU said that the CCAC is a committee under MASEU. It is also not disputed that the defendant is a member of MASEU. It is common knowledge that the big organizations like trade unions form various committees to look after the interest of their members. The defendant, therefore had an interest in communicating the grievances contained in the defamatory letter to Dr Mohamadon Abdullah who in his capacity of as head of flight operations had a corresponding duty to receive it. Counsel for plaintiff has conceded in his submission that Dr Mohamadon Abdullah may have had an interest in the communication as he oversaw cabin crew matters. However he said that the Executive Vice President of MAS to whom the letter was copied had no interest in the communication. The defendant said that the CCAC decided to send the letter to him as he was higher in rank than Dr Mohamadon Abdullah in the MAS hierarchy. The fact that the Executive Vice President of MAS is higher in rank was not challenged by Counsel for plaintiff but he submitted that he had nothing to do with cabin crew matters. I think that the communication to the Executive Vice President of MAS is privileged as he like Dr Mohamadon Abdullah has an interest in the communication by virtue of his position. It must be noted that the letter was not published to all and sundry but only to two high ranking officials in the MAS top management. The case of *Aloysius Tan Ting Kai v Ng Hong Kheng & Ors* [1982] 1 CLJ 122 where the court held that publication to the president of the Employees Union was not privileged can be distinguished as it can be presumed that in the instant case the Executive Vice President of MAS is concerned with directly or indirectly with cabin crew matters by virtue of his position. I think that the following passage cited by counsel for defendant from *Mehrotra's Law of Defamation and Malicious Prosecution, Civil and Criminal* (3rd Ed) at p 24 is applicable:

> 'Statements made to authority having administrative control over the person or having lawful authority over that person with respect to the subject of accusation, they do not constitute defamation. (*Bhanumathi Rajah v MSP Rajesh* 1986 LW(Cr)16 at p 19 (Mad).'

I also think that in respect of the publication to the President of MASEU, the defendant can rely on the defence of qualified privilege. This is because it is clear from the evidence adduced that MASEU was involved from the beginning in the formation of CCAC and its top officials including its President had come to Kota Kinabalu to hear grievances of the cabin crew who are members of the union against the plaintiff. DW2 said he gave the green light to the defendant to go ahead with the petition after the contents of the defamatory letter was read to him over the phone by the defendant. Therefore it can be said that the President of MASEU had a duty to receive a copy of the petition because the interest in the matter is mutual. I therefore hold that the defence of qualified privilege succeeds in respect of the publication to all three parties.

That is an impeccable judgment but Mr Sugumar Balakrishnan, learned counsel for the appellant, contended that there was no evidence upon which the sessions court judge could have concluded that there was a corresponding or common interest on the part of the two personages of

MAS mentioned in the petition. These two persons hold very high positions in MAS and any matter that may affect MAS, of which the unhappiness or grievances of the cabin crew must surely be one, and that must surely command their interest as much as it is the interest of the defendant as a member of MASEU to resolve the matter for the cabin crew. I can add no more to the reasoning, except to say that I adopt every word of it. I can find nothing wrong in that conclusion.

The appellant had rested their appeal on this one ground of common interest and I find that the sessions court judge was right in concluding that there was such.

Conclusion

In the premises, the appeal is dismissed with costs to the respondent.

Appeal dismissed with costs.

Reported by Ezatul Zuria Azhari